



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR
 MNDCT
 CNR
 DRI

Introduction

This hearing was convened by way of conference call concerning 4 applications made by the tenants and by the landlord. The tenants' applications seek an order cancelling a notice to end the tenancy for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and disputing a rent increase. The landlord's application seeks an Order of Possession and a monetary order for unpaid rent or utilities, which was made by way of the Direct Request process and was referred to this participatory hearing, joined to be heard with the tenants' applications.

The individually named landlord attended the hearing and represented the landlord Society. The tenant also attended the hearing with an Advocate. The other named tenant was an Advocate for the tenant, but did not attend the hearing. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties did not agree that all evidence had been exchanged, and considerable time was spent attempting to determine what evidence had been exchanged.

The tenant advised that no evidence was received from the landlord, however the landlord advised that the evidence was sent by registered mail on October 10, 2020 and orally provided a tracking number.

The tenant's Advocate advised that due to COVID-19 restrictions, the Advocate could not enter so the tenant's evidence was hand-delivered to a receptionist of the landlord Society on October 16, 2020, and has provided a photograph of an envelope addressed to the landlord Society at the door of the landlord Society's office. However the landlord advised

that he received a Notice of Dispute Resolution Proceeding, a Decision from a previous hearing dated June 16, 2020, a Decision from another previous hearing dated July 17, 2020, and a Program Agreement, for a total of 19 pages, in September or early October, 2020.

A lot of the tenant's evidence was filed in the Residential Tenancy Branch automated system on August 12 and 13 and 16, 2020; as well as September 17 and 18 and 25, 2020; and on October 16, 2020, and combined add up to well more than 19 pages. The photograph provided by the tenant appears to be an envelope containing more than 19 pages, but I am not satisfied that it contains the evidence filed in August or September, 2020.

I am not satisfied that either party has complied with the *Act* with respect to exchange of all evidence. Given that the parties have both provided a copy of the notice to end the tenancy and the Agreement entered into at the commencement of the tenancy, those documents are considered in this Decision.

The tenant's Advocate advised that there have been 2 previous hearings on June 16 and July 17, 2020, and I advised the parties that it is important that I am mindful of not making any decisions or findings on a matter that has already been adjudicated upon. Therefore, the previous Decisions are considered in this Decision.

I also advised the parties that the Rules of Procedure require that applications for a single hearing must be related, and given the number of applications and the time constraints, I dismissed the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, with leave to reapply.

During the course of the hearing, the landlord raised the issue of jurisdiction, which is dealt with in this Decision.

Issue(s) to be Decided

- Is the landlord exempt from the requirements of Sections 34 (2), 41, 42 and 43 of the *Residential Tenancy Act* or the regulations?
- Has the tenant established that rent has been increased contrary to the *Act* or the regulations?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*, or should it be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The tenant testified that this month-to-month tenancy began on December 7, 2018 and the tenant still resides in the rental unit. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

In January, 2020 a support worker came by for a monthly meeting and said that the tenant had been working for 6 months so it was time to increase rent.

At the beginning of the tenancy, the tenant was paying \$1,000.00 per month, then in February 2020 rent was increased to \$1,100.00 in a meeting, and the tenant told the support worker that the tenant's income would not increase until September 2020. The tenant worked part-time and told the housing support worker the work would be full-time starting in September, 2020. That was the plan, so the housing support worker said that rather than increasing rent by \$600.00 per month, it would be increased by \$100.00 every month until it reached \$1,600.00 per month, which is the actual rent before the subsidy.

Rent is due on the 1st day of each month and there are only rental arrears for this month, November, 2020 in the amount of \$1,100.00. The tenant did not receive a Notice of Rent Increase, just a notice stating that the subsidy was cancelled and that rent would be \$1,600.00 per month. The tenant paid \$1,100.00 in September and \$1,100.00 in October, 2020.

The landlord testified that rent has been subsidized by the landlord Society. The program subsidizes housing for low income earners, and the Society owns some properties as well. In this case, the landlord has the cooperation with the Society's landlord. It is a Housing First program supported by the Provincial Government and is exempt from the *Residential Tenancy Act*, although a different finding was made in a previous Decision involving the parties in this matter. A copy of the June 16, 2020 Decision has been provided as evidence for this hearing by the tenant, which states, in part:

"The Tenant stated that he does not really receive much support or care, other than a monthly meeting with his support worker. The Tenant stated that he receives a small rent subsidy based on his income. The Tenant lives and functions independently, and without medical or therapeutic assistance. The Landlord was asked if this facility operated under the Community Care and Assisted Living Act, but he said he wasn't sure. The Landlord pointed out that the Tenant signed a program participant agreement, whereby the Tenant agreed the Act does not apply, and that this unit is only available while he is receiving support services."

“Although the agreement signed by the Tenant specifies that this accommodation is exempt from the Act, I find the Landlord has not provided sufficient evidence to demonstrate which part of the Act they are exempt under.”

In that case, the tenant had applied for an order that the landlord make repairs to the rental unit or property; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for monetary compensation. The Arbitrator dismissed the monetary claim because it was not related to the primary application, being repairs. The parties settled the balance of the dispute.

On July 17, 2020 another hearing was held concerning an application made by the tenant seeking an order that the landlord comply with the *Act*, regulation or tenancy agreement; an order that the landlord make repairs to the rental unit or property; an order limiting or setting conditions on the landlord's right to enter the rental unit and for an order permitting the tenant to change the locks to the rental unit. The tenant withdrew the application for an order permitting the tenant to change the locks and the parties settled the balance of the dispute. There is no mention in that Decision about jurisdiction or exemptions from the *Act*.

The landlord testified that when the tenant moved in, he was given a copy of the lease agreement that the landlord has with the owner showing that rent was \$1,600.00 per month. The tenant was also given a subsidy by the landlord Society, and a copy of the Agreement has been provided for this hearing by both parties. The subsidy was lost due to the tenant's conduct, and a letter to that effect was given to the tenant. The landlord testified that it specifies 30 days' notice of termination of the rental subsidy with the landlord Society, and that as of September 1, 2020 the tenant will be responsible for paying the entirety of the rent of \$1,600.00 per month.

The landlord further testified that the tenant paid \$1,100.00, but owed \$1,600.00 in September. The tenant paid \$1,100.00 in August as well. On September 10, 2020 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by placing it on the tenant's mailbox. A copy has been provided for this hearing, and it is dated September 10, 2020 and contains an effective date of vacancy of September 23, 2020 for unpaid rent in the amount of \$500.00 that was due on September 1, 2020.

Rent was always \$1,600.00 per month, less the subsidy, and the tenant lost the subsidy from the Society landlord for multiple violations.

Analysis

Section 2 of the Regulations states:

2 Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the government of British Columbia;
 - (ii) the British Columbia Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation;
 - (iv) a municipality;
 - (v) a regional district;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

I have read the Agreement between the landlord and the tenant, which states that the Program Accommodation is exempt from the *Residential Tenancy Act*. It also states that the tenant will provide and adhere to the Declaration of Income and Assets and be responsible for the conduct of guests, and that the Program Participant (tenant) agrees to cooperate with the provision of Support. The amount of payment payable will either be determined on the basis of 30% of the tenant's gross monthly household income, or will be a fixed rent structure as determined by the Provider. It also sets out what notice is required to the tenant if the landlord ends the Agreement.

The June 16, 2020 Decision specifies that the landlord did not provide proof that the landlord is exempted from the *Act*, and I agree a landlord may not opt out of the

Residential Tenancy Act. However, the Decision also states that the landlord had not sufficiently demonstrated which part of the *Act* the landlord is exempted under. In this case, the landlord testified that this tenancy involves a Housing First program supported by the Provincial Government that provides a maximum of \$500.00 subsidy, and I accept that. Further, the tenant testified that the actual rent was \$1,600.00 before the subsidy. Therefore, I also find that there has not been a rent increase contrary to the law, but the subsidy was removed, and the application made by the tenant disputing a rent increase is dismissed.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the tenant does not dispute that the full amount of rent was not paid to the landlord for the month of September, 2020.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. The tenant has not paid the rent within 5 days as required, and therefore, I find that the landlord is entitled to an Order of Possession. The tenant's application to cancel the Notice is dismissed. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant in the amount of \$500.00 and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application disputing a rent increase is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$500.00, and I order that the

landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise recover it.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 05, 2020

Residential Tenancy Branch